

Frequently Asked Questions About Appraisal Review Board Duties

1. May an appraisal review board make its own determination of value if it does not agree with the evidence presented by the property owner and the appraisal district staff?

Answer: Yes, but only if the determination is supported by the evidence presented at the hearing. Appraisal review boards must make determinations based on the evidence presented at protest hearings only. Board members should not rely on their personal or professional opinions as a substitute for evidence.

Tax Code Section 41.43(a) requires appraisal districts to establish values by a preponderance of evidence in protests related to excessive value or unequal appraisal. "If the appraisal district fails to meet that standard, the protest shall be determined in favor of the property owner."

If the appraisal district does establish its value on an excessive value or unequal appraisal protest by a preponderance of the evidence, after the property owner presents evidence, the appraisal review board must weigh the evidence presented by both parties and make its determination based on all of the evidence presented. In weighing the evidence, the appraisal review board may make determinations such as whether or not the evidence is reliable or credible.

In weighing the evidence, the appraisal review board may make value determinations that differ from the values offered by the appraisal district and the property owner. All determinations, however, must be supported by the evidence introduced at the hearing.

2. What should be done if the appraisal review board member has personal knowledge of certain facts not presented by the property owner or the appraisal district as evidence during the hearing?

Answer: Tax Code Section 41.67(c) permits the appraisal review board to take "official notice . . . of any fact judicially cognizable." This terminology is limited generally to information in the public domain, such as newspaper articles and other public information. The appraisal review board should seek legal advice from its attorney about what facts are or are not judicially cognizable. The matter for which official notice is taken must be stated so that the parties may contest the facts at the hearing. Any other personal knowledge may not be shared with other appraisal review board members, either during the hearing or outside of the hearing. To do so would be an offer of evidence by the appraisal review board member during the hearing and a prohibited communication under Tax Code Section 41.66(f) if shared outside of the hearing.

3. Who would replace the appraisal review board member who could not participate in a protest hearing because of a recusal related to a communication with another person concerning the evidence, argument, facts, merits and any other matter related to a protest?

Answer: Tax Code Section 41.66(g) requires that the appraisal district board of directors must adopt and implement a policy concerning the temporary replacement of an appraisal review board member who has communicated with another person in violation of subsection (f).

4. May an appraisal review board make a determination that is inconsistent with a district court ruling or provisions of the Tax Code?

Answer: Appraisal review boards must follow the law, including provisions dealing with appraisal methodology and exemption eligibility. Appraisal review boards should consult their legal counsel with any questions regarding what provisions of law are applicable.

5. How should the appraisal review board develop its hearing procedures?

Answer: Tax Code Section 41.66 requires that hearing procedures be established by rule and states that, “to the greatest extent practicable,” the procedures must be informal. When considering procedures, appraisal review boards should remain mindful that property owners and appraisal districts are entitled to offer evidence, examine or cross-examine witnesses or other parties, and present arguments on the matter subject to the hearing. The legal counsel for the appraisal review board should be involved in the development of these procedures to ensure compliance with Tax Code requirements. In addition, the procedures must follow Comptroller model hearing procedures, beginning in 2014.

6. What should an appraisal review board member do if he or she has an interest in the outcome of a protest?

Answer: Tax Code Section 41.69 states that the member may not participate in the determination of a protest “in which he is interested or in which he is related to a party by affinity within the second degree or by consanguinity within the third degree, as determined under Chapter 573, Government Code.” The member should not participate in the hearing, and another member should take his or her place. The member should not be present during the hearing and may not vote on the determination. It is important to contact the attorney representing the appraisal review board for advice on this matter.

7. May the appraisal review board seek advice from the Comptroller’s Property Tax Assistance Division concerning a protested matter?

Answer: Tax Code Section 5.041(f) states:

The Comptroller may not advise a property owner, a property owner’s agent, or the chief appraiser or another employee of an appraisal district on a matter that the comptroller knows is the subject of a protest to the appraisal review board. The Comptroller may provide advice to an appraisal review board member as authorized by Subsection (a)(4) of this section or Section 5.103 and may communicate with the chairman of an appraisal review board or a taxpayer liaison officer concerning a complaint filed under Section 6.052.

8. May an appraisal review board select its own legal counsel?

Answer: Tax Code Section 6.43 provides that an appraisal review board may employ legal counsel as provided by the budget adopted by the appraisal district board of directors or use the services of the county attorney. The appraisal district may not require an appraisal review board

to employ a specific attorney as legal counsel. Additionally, pursuant to Tax Code Section 6.43, certain attorneys are prohibited from serving as legal counsel for the appraisal review board.

9. May an appraisal review board hire personnel?

Answer: The Tax Code does not provide authority for appraisal review boards to employ staff. Tax Code Section 6.43 provides that the appraisal district may provide clerical assistance to the appraisal review board, including assisting the board with the scheduling and arranging of hearings.

10. Should protest hearings be scheduled only on business days?

Answer: Tax Code Section 41.71 states that “an appraisal review board by rule shall provide for hearings on protests in the evening or on a Saturday or Sunday.”